

Bond Election Considerations: Open Meetings Act, Public Information Act, & Use of City Resources

January 9, 2012



What is the Open Meetings Act?

- The Open Meetings Act is a Texas statute that provides for public access to meetings of governmental bodies.
- Chapter 551 Texas Government Code.
- Requires that every meeting of a governmental body, with certain narrow exceptions, be open to the public with notice of the time, place, and subject of the meeting.



Does the Open Meetings Act Apply to This Task Force?

- Yes.
- Resolution No. 20111006-057 requires the Task Force to conduct regular and open posted meetings.



What Does “Comply with the Open Meetings Act” mean?

- (1) Meetings must be open to the public (time and place);
- (2) The public has the right to know the subject matter of the meeting; and
- (3) Records must be kept (minutes or tape recordings).



What is a Meeting?

- While the Open Meetings Act refers to a meeting as a verbal exchange among a quorum of the committee, or between a member of the public and a quorum of the committee, the Attorney General and courts have added that a meeting can occur if the conversation happens via other forms of communication for example email, or text message.
- **Walking quorum:** if two or three members discuss a matter in private, then one of them discusses the matter with two or three more members, this can become a “walking” quorum.
- A meeting may not be convened unless a quorum of the board is physically present in the meeting room.
- If a quorum is at an event, but not talking about business, that is not a meeting – but if you start talking about committee business, it is a meeting.



What is a Quorum?

- A quorum is a majority of the body.
- For this 15 member Task Force a quorum is eight (8) members.



What about Smaller Groups?: Working Groups

- If the Task Force forms smaller groups to study a limited issue, those are called a “working group.”
- These smaller groups must be less than a quorum, they must not make final decisions, and they can only be temporary.
- Council’s resolution requires that the “entirety of the task force’s proceedings” be open to the public to maximize citizen engagement.
Therefore, we recommend that even these smaller groups conduct open, posted meetings.



What Must be Posted?

- The Open Meetings Act requires written notice of all meetings 72 hours in advance.
- The notice must be sufficient to let the general public know the subjects to be considered at the meeting.
- The notice must not be so detailed that it is a script for the meeting.
- The notice must be clear enough so the public can understand it.



Posting Tips

- “Other business” – too broad and not descriptive enough.
- Can group items to show which ones will have similar types of actions – e.g., “Action items” and “briefings” – action items are ones on which the commission may vote; briefings are public presentations with no citizen comment.



How do we Keep a Record?

- The City must keep minutes or make a recording of every commission meeting.
- Minutes must state the subject of each discussion and must show action taken.
- City staff assists this committee in keeping minutes that the Task Force approves at its next scheduled meeting.
- The meetings are sometimes recorded on Channel 6.
- These minutes and recordings are public records and are open to people who ask for them per the **Public Information Act**. Email communications between staff and the Task Force, **and between Task Force members relating to Task Force business**, is public information.



Can we Discuss Something that Wasn't Posted?

- Generally, no.
- If a Task Force member or member of the public raises a subject that has not been included in the notice for the meeting, it cannot be discussed.
- You may:
 - (1) give a factual answer to a simple question (e.g. “who do I talk to about which sidewalk projects are included in the bond funded projects?” “You are welcome to speak to Ms. So and So.”)
 - (2) recite existing policy.



What are the Rights of the Public?

- The Act gives the public the right to have timely notice of:
 - Time of meeting;
 - Location of meeting; and
 - Subjects to be discussed.
- The public can attend the meeting.
- The public can record the meeting.



Executive Session

- Executive sessions are meetings that are permitted to be conducted in private.
- Meetings closed to the public or executive sessions are normally not appropriate for boards and commissions and must not be conducted without the advice and consent of the City Attorney.
- If the Task Force believes a closed session is appropriate, consult with the Law Department.



Bond Elections and City Resources

- City has certain limits on what it can do relating to advocating for something that the voters are being asked to consider.
- Task Force can help City stay within limits by knowing them.



Bond Elections and City Resources (1)

- Public funds cannot be spent on political advertising. (Tex. Elec. Code 255.003).
- Political advertising is a communication that advocates a particular outcome in an election – including a bond election.



Bond Elections and City Resources (2)

- It includes statements made in writing, orally, email messages, posters, newsletters, fliers, and advertising on TV or radio or the internet.
- Spending of public funds includes use of any city resources such as computers, copiers, phones, and people.



What kind of statements are “advocating”?

- Asking for support or reject of a bond proposition.
- Saying phrases such as:
 - “we highly favor this idea.”
 - “It is very important that this proposition pass.”
 - Asking voters to “sustain the excellence.”
 - “Support our vision – our future depends on your commitment.”
 - “This bond is the right thing to do for our community.”



Words to avoid

- “Best Solution”
- “Fantastic”
- “State-of-the-art”
- “Need”
- “Horrible shape”
- “We must do something”



What is okay?

- Factual descriptions of the purpose of a measure if the communication does not advocate passage or defeat of the measure. (Tex. Elec. Code 255.003(b)).
- Examples: Growth rates, capacity of a facility, performance data, tax rate effect, identifying the proposed projects, specific data on how the bond funds will affect the city's mission.



What is the penalty for violating the Election Code?

- A person who violates the code commits a Class A misdemeanor.



How does this impact the Task Force?

- Recognize that City staff cannot advocate for or against bond propositions.
- Recognize that City resources, including press releases and materials that the City will put in its web site regarding the Task Force must not advocate for or against bond propositions.



- Questions?
- Thank you very much for your service!

